U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-P-

DATE: JAN. 8, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a physician and researcher specializing in neonatology, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The Director found that the Petitioner had not established that he is a member of the professions holding an advanced degree and that a waiver of a job offer would be in the national interest. On appeal, the Petitioner submits the same brief presented in response to the Director's request for evidence (RFE).

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
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> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The Petitioner must also establish that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise...." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't of Transp., 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*) set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, a petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner must demonstrate that his past record justifies projections of future benefit to the national interest. *Id.* at 219. A petitioner's assurance that he will, in the future, serve the national interest cannot suffice to establish prospective national benefit. Furthermore, eligibility for the waiver must rest with the petitioner's own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner's area of expertise are insufficient to show eligibility for a national interest waiver. *Id.* at 220. At issue is whether the petitioner's contributions in the field are of such significance that he merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification he seeks. A petitioner must document a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

II. ANALYSIS

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on July 11, 2014. According to the ' Annual Intern/Resident Agreement" dated February 27, 2014, the

Petitioner was accepted for enrollment in a one year clinical training program in graduate medical education as a resident. Appendix A of the agreement, which details his appointment, was not submitted.

As stated by the Director in his decision, the Petitioner did not provide copies of his medical degree or his Educational Commission for Foreign Medical Graduates certificate, even though they were specifically requested in the RFE. The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The Petitioner does not address this issue on appeal. While the Petitioner's Ohio license lists his medical education, the license is not an official academic record. The Petitioner has not asserted or documented that primary evidence, his official academic record, is either unavailable or does not exist. Therefore, he may not rely on secondary evidence. 8 C.F.R § 103.2(b)(2). For this reason, the Petitioner has not submitted the required initial evidence to confirm that he is a member of the professions holding an advanced degree.

With respect to the national interest waiver, the Petitioner has established that his work as a physician is in an area of substantial intrinsic merit and that the proposed benefits of his research on breast milk would be national in scope. It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The Petitioner documented two poster presentations and one journal article. Although the Petitioner's resume includes an additional poster presentation and two oral presentations, he did not provide any materials regarding the additional presentations. Regardless, the Petitioner must show the actual impact of his work. Not every published article or conference presentation demonstrates influence on the field as a whole upon dissemination. Many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. Professional associations, educational institutions, healthcare organizations, employers, and government agencies promote and sponsor these meetings and conferences. Although presentation of the Petitioner's work confirms that he shared his original findings with others, there is no evidence showing, for instance, frequent independent citation of his work, or that his findings have otherwise affected the field at a level sufficient to waive the job offer requirement.

In addition to the above, the Petitioner submitted various reference letters discussing his work in the field. PhD, RD, Professor of Pediatrics and Nutrition at Senior Nutritionist in the Department of Pediatrics at and co-author of the Petitioner's poster presentations, stated that their research revealing that a mother's milk protein content varies significantly from mother to mother "has led other hospitals around the country to change their protocols." did not, however, provide any additional information regarding which hospitals or documentation to support her assertion. For example, the Petitioner did not include protocols from independent hospitals citing the Petitioner's work. Moreover, while the record contains letters from physicians at other institutions, none of them suggest their employers have adopted protocols based on the Petitioner's results. USCIS need not rely on unsubstantiated, conclusory statements. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990).

Head of the Division of Neonatal Medicine, Vice Chair of the Department of Pediatrics, and Director of the Center for Neurobehavioral Development at the affirmed that the Petitioner's work "holds significant potential towards improving the health and neurologic outcome" of newborns, but did not indicate that his work has already influenced the field of neonatology. Associate Professor of Pediatrics at the maintained that the Petitioner's "combination of clinical and diagnostic expertise . . . makes him unique." Any assertion that the petitioner possesses a "unique" background relates to whether similarly-trained workers are available in the United States and is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *NYSDOT*, 22 I&N Dec. at 221.

All of the letters praised the Petitioner and his work, but do not establish that his research has influenced the field or that his role at has already had an impact beyond the patients and staff at his hospital. Rather, they predict that the Petitioner's research, combined with future research, will improve growth among premature infants. Although the Petitioner's medical research has value, any research must be original and likely to present some benefit if it is to receive funding and attention from the medical or scientific community. Performing original research that adds to the general pool of knowledge in the field does not inherently serve the national interest to an extent that is sufficient to waive the job offer requirement. *See Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . as expert testimony," but is ultimately responsible for making the final determination regarding a foreign national's eligibility for the benefit sought). USCIS may evaluate the content of letters as to whether they support the petition. *Id. See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). As the submitted reference letters did not establish that the Petitioner's work has influenced the field as a whole, they do not demonstrate his eligibility for the national interest waiver.

III. CONCLUSION

Considering the letters and other evidence in the aggregate, the record does not establish that the Petitioner's work has influenced the field as a whole or that he will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. The Petitioner has not shown that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification he seeks.

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Although a petitioner need not demonstrate notoriety on the scale of national acclaim, he must have "a past history of demonstrable achievement with some degree of influence on the field as a whole." *NYSDOT*, 22 I&N Dec. at 219, n.6. On the basis of the evidence submitted, the Petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of S-P-*, ID# 15031 (AAO Jan. 8, 2016)